LTH CARE FINANCING ADMINISTRATION — OMB NO. 0938-0193

RANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

1. TRANSMITTAL NUMBER: 04-005	2. STATE: Wisconsin
)R: HEALTH CARE FINANCING ADMINISTRATION	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)
): REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE ~~7/1/04~~ 10/1/04 (P+I)

TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

. FEDERAL STATUTE/REGULATION CITATION: 2 CFR 447.331	7. FEDERAL BUDGET IMPACT: a. FFY 2004 $0 b. FFY 2005 P+I ($3800,000) ~~$0~~
. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: ~~Document relating to Attachment 4.19-B, pp. 5 and 5a~~ Sup. 1 to Att. 3.1A, p. 6b Sup 1 to Att. 3.1B, p. 5b (dg)	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: Same

10. SUBJECT OF AMENDMENT:

Supplemental Drug Rebate boilerplate contract

11. GOVERNOR'S REVIEW *(Check One)*:

☒ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☐ OTHER, AS SPECIFIED:

7/21/04

12. SIGNATURE OF STATE AGENCY OFFICIAL: Mark B. Moody	16. RETURN TO: Mark B. Moody Administrator Division of Health Care Financing 1 W. Wilson St. P.O. Box 309 Madison, WI 53701-0309
13. TYPED NAME: Mark B. Moody	
14. TITLE: Administrator, Division of Health Care Financing	
15. DATE SUBMITTED: July 21, 2004	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED: 7/23/04	18. DATE APPROVED: 9/7/04

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL:	20. SIGNATURE OF REGIONAL OFFICIAL: Cheryl A. Harris
21. TYPED NAME: Cheryl A. Harris	22. TITLE: Associate Regional Administrator ~~Division of Medicaid~~ Children's Health

23. REMARKS:

8/20/04 State Request Pen + Ink Change to Federal Budget Impact to ($3,800,000) FOR FFY 2005.

RECEIVED
JUL 23 2004
DMCH - MI/MN/WI

8/31/04 State Request Pen + Ink Change to Effective date to 10/1/04

FORM HCFA-179 (07-92)

12.a. Prescribed drugs, continued.

6. Prior authorization programs for covered outpatient drugs provide for a response within 24 hours of a request for prior authorization and for the dispensing of a 72-hour supply of medications in emergency situations.

7. A drug use review program, including prospective and retrospective drug utilization review, has been implemented, in compliance with federal law.

8. Claims management is electronic, in compliance with federal law.

9. The state is in compliance with section 1927 of the Social Security Act. The state will cover drugs of manufacturers participating in the federal rebate program. The state is in compliance with reporting requirements for utilization and restrictions to coverage. Pharmaceutical manufacturers may audit utilization data. The unit rebate amount is confidential and may not be disclosed for purposes other than rebate invoicing and verification.

10. The state will negotiate supplemental rebates in addition to federal rebates provided for in Title XIX. Rebate agreements between the state and a pharmaceutical manufacturer will be separate from the federal rebates. Supplemental rebates received by the state in excess of those required under the federal drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the federal rebate agreement.

11. A rebate agreement between the state and a drug manufacturer for drugs provided to the Medicaid program, submitted to CMS on August 27, 2004 and entitled, "State of Wisconsin Supplemental Rebate Agreement," has been authorized by CMS.

12. Pursuant to 42 USC 1396r-8, the state is establishing a preferred drug list with prior authorization requirements for drugs not included on the preferred drug list to negotiate drug discounts rebates or benefits for the Medicaid program.

12.a. Prescribed drugs, continued.

6. Prior authorization programs for covered outpatient drugs provide for a response within 24 hours of a request for prior authorization and for the dispensing of a 72-hour supply of medications in emergency situations.

7. A drug use review program, including prospective and retrospective drug utilization review, has been implemented, in compliance with federal law.

8. Claims management is electronic, in compliance with federal law.

9. The state is in compliance with section 1927 of the Social Security Act. The state will cover drugs of manufacturers participating in the federal rebate program. The state is in compliance with reporting requirements for utilization and restrictions to coverage. Pharmaceutical manufacturers may audit utilization data. The unit rebate amount is confidential and may not be disclosed for purposes other than rebate invoicing and verification.

10. The state will negotiate supplemental rebates in addition to federal rebates provided for in Title XIX. Rebate agreements between the state and a pharmaceutical manufacturer will be separate from the federal rebates. Supplemental rebates received by the state in excess of those required under the federal drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the federal rebate agreement.

11. A rebate agreement between the state and a drug manufacturer for drugs provided to the Medicaid program, submitted to CMS on August 27, 2004 and entitled, "State of Wisconsin Supplemental Rebate Agreement," has been authorized by CMS.

12. Pursuant to 42 USC 1396r-8, the state is establishing a preferred drug list with prior authorization requirements for drugs not included on the preferred drug list to negotiate drug discounts, rebates or benefits for the Medicaid program.

SUPPLEMENTAL REBATE AGREEMENT

This Supplemental Rebate Agreement ("Agreement") between the Department of Health and Family Services ("DHFS"), and [Manufacturer Legal Name] ("Manufacturer"), sets forth the terms and conditions regarding the provision of supplemental rebates on Medicaid payments for certain of Manufacturer's products by DHFS.

NOW, THEREFORE, the parties to this Agreement agree as follows:

1.0 Definitions

1.1 "Wisconsin Medicaid Program" or "Wisconsin Medicaid" shall mean the joint federal and state medical assistance program as established and defined pursuant to Title 42 U.S.C. 1396, et seq., that provides reimbursement for or coverage of prescription drug products to Medicaid Recipients in Wisconsin.

1.2 "Unit" means drug unit in the lowest identifiable amount (e.g., tablet or capsule for solid dosage forms, milliliter for liquid forms, gram for ointments or creams).

1.3 "Preferred Drug List" or "PDL" shall mean the list developed by the PA Committee and adopted by DHFS pursuant to Wis. Stat. Sec. 49.45(49m)(c) and 42 U.S.C. 1396r-8(d)(1)(A) and (d)(5).

1.4 "Fiscal Quarter" shall mean one of the four three (3)-month periods by which the state fiscal year is divided, that fiscal year beginning July 1 and ending on the following June 30.

1.5 "Recipient" shall mean any person enrolled in the Wisconsin Medicaid Program and eligible to receive prescription drug benefits, or in the prescription drug assistance program for elderly persons under Wis. Stat. Sec. 49.688.

1.6 "Average Manufacturer Price" or "AMP" shall mean the AMP as reported under 42 U.S.C. §1396r-8, as such may be amended from time to time.

1.7 "Best Price" shall mean Best Price as reported under 42 U.S.C. §1396r-8, as such may be revised from time to time, excluding State Supplemental Rebate amounts.

1.8 "Primary Rebate" shall mean any discount provided by a manufacturer pursuant to 42 U.S.C. 1396r-8 or Wis. Stat. Sec. 49.688(6) and includes both the "Basic Rebate" and any applicable "Additional Rebate" as defined in 42 U.S.C.§1396r-8.

1.9 "Product" shall mean any prescription drug product listed in Attachment B.

1.10 "Pharmacy" shall mean a facility licensed in accordance with Wis. Stat. Sec. 450.06, to dispense legend drugs, and certified as a Wisconsin Medicaid provider under Wis. Stat. Sec. 49.45(2)(a)11. The definition of Pharmacy shall not include any facility located outside of the United States.

1.11 "PA Committee" or "Prescription Drug Prior Authorization Committee" shall mean the committee of health care professionals and other individuals constituted pursuant to Wis.

Stat. Sec. 49.45(49) for the purpose of developing a Preferred Drug List and of advising DHFS on issues related to PA decisions for the Wisconsin Medicaid Program .

1.12 "State Supplemental Rebate" shall mean any cash rebate or other program benefit as defined by Wis. Stat. Sec. 49.45(49m) that offsets (a) a Wisconsin Medicaid expenditure and supplements the Primary Centers for Medicare and Medicaid Services (CMS) Primary Rebate or, (b) an expenditure by the prescription drug assistance program for elderly persons under Wis. Stat. Sec. 49.688. State Supplemental Rebate amounts shall be calculated in accordance with Attachment B. In no case may the State Supplemental Rebate amount be a negative amount.

1.13 "Guaranteed Net Unit Price" or "GNUP" is the net price per unit specified in Attachment B. The GNUP is equal to the per unit Wholesale Acquisition Cost ("WAC") of the product less Primary Rebate and State Supplemental Rebate unit amounts, if any.

1.14 "CMS" shall mean the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration) of the United States Department of Health and Human Services, or any successor or renamed agency carrying out the functions and duties heretofore carried out by such office.

1.15 "National Drug Code" or "NDC" shall mean the unique 11-character code assigned to drug products composed of three distinct sub-codes to include the labeler code, product code, and package size.

1.16 "Wholesale Acquisition Cost" or "WAC" shall mean the Direct Manufacturer Price Wholesale Unit Price (BB_P) as of the first day of a Fiscal Quarter published in the National Drug Data File by First Data Bank, Inc.

2.0 DHFS Obligations

2.1 Covered Benefit. DHFS shall provide or arrange for the provision of drug benefits to Recipients as set forth in applicable state and federal law.

2.2 Preferred Drug List. DHFS shall adopt and maintain a PDL. No Product on the Preferred Drug List shall be discouraged or disadvantaged in any way relative to any other brand name prescription drug in its therapeutic class unless specifically stated otherwise in Attachment B.

2.2.1 PDL Documentation. DHFS shall publish the Preferred Drug List for each therapeutic class on DHFS's (or its designee's) website within thirty (30) days after the Preferred Drug List is adopted for that therapeutic class and shall update the website quarterly or after each therapeutic class review by the PA Committee. In addition to the website, DHFS may also publish and update PDLs by any other means it deems appropriate.

2.2.2 PA Committee. DHFS shall maintain, in accordance with Wis. Stat. Sec. 49.45(49), a PA Committee that may review and recommend products for inclusion on the PDL.

2.2.3 Notice of PDL Review. Except for situations deemed emergencies by DHFS, DHFS or its designee shall notify Manufacturer at least 10 days prior to any scheduled review of a Product and shall provide Manufacturer the opportunity to present information on the Product's merits for inclusion in the PDL.

2.3 Invoicing. DHFS shall invoice State Supplemental Rebates separately from Primary Rebates, using the format set forth in Attachment A. DHFS shall submit the State Supplemental Rebate invoice to Manufacturer within ninety (90) days after the Fiscal Quarter in which the Product was paid for by DHFS.

2.4 CMS Approval. DHFS represents and warrants that CMS has authorized this Agreement and found that the payment of Supplemental Rebates hereunder shall not affect Manufacturer's calculation of Best Price or AMP.

2.5 Fraud and Abuse. It is DHFS's belief that the business arrangement contemplated by this Agreement is not subject to the provisions of 42 U.S.C. 1320a-7b(b) prohibiting illegal remunerations. Should the above provisions apply, it is DHFS's belief that the business arrangement contemplated by this Agreement meets the discount exception found in 42 U.S.C. 1320a-7b(b)(3)(A), which excludes from prohibited activities the practice of discounting or other reductions in price obtained by a provider of services or other entity under a Federal health care program, if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under a Federal health care program. DHFS currently provides CMS full and unfettered access to all information held by the DHFS regarding the implementation of the Wisconsin Medicaid Program, and shall continue to do so throughout the implementation of the State Supplemental Rebate and Wisconsin Preferred Drug List.

3.0 Manufacturer Obligations

3.1 State Supplemental Rebate Payment. Manufacturer agrees to provide a State Supplemental Rebate to DHFS for each of its Products dispensed to Recipients by Pharmacies for each Fiscal Quarter, or portion thereof, that each Product is included in the PDL. Manufacturer shall pay to DHFS the State Supplemental Rebate amount in accordance with the formula set forth in Attachment B. Nothing in this Agreement shall be construed to relieve Manufacturer of its obligation to pay Primary Rebates under contracts, if any, with the CMS for Utilization by Wisconsin Medicaid Recipients. DHFS shall remit the federal portion of State Supplemental Rebate payments made under this Agreement to the CMS as required under its approved state plan.

3.1.1 Payment Timeframe. Manufacturer shall pay to DHFS the State Supplemental Rebate amount to which DHFS is entitled in accordance with the formula set forth in Attachment B, within thirty-eight (38) days of receipt of DHFS' invoice described in Section 2.3 of this Agreement. Manufacturer's failure to remit the State Supplemental Rebate amount in a timely manner may result in the removal of the relevant Product or Products from the PDL, pursuant to the application of the dispute resolution process set forth in Paragraph 3.1.1.2 below.

3.1.1.1 Incomplete Submission. Manufacturer shall have no obligation for claims that are not submitted as part of an invoice pursuant to Section 2.3 of this Agreement. Manufacturer shall notify DHFS or its designee of any incomplete invoice within thirty-eight (38) days of Manufacturer's receipt of such invoice pursuant to Section 2.3 of this Agreement.

3.1.1.2 Over/Underpayment. If either party discovers an error in the payment of State Supplemental Rebates by Manufacturer, it shall notify the other of such error. The parties shall attempt to reconcile all differences through discussion and negotiation; if that attempt fails, the parties will resolve their dispute in accordance with generally applicable procedures followed by DHFS or CMS in disputes concerning Primary Rebates. Manufacturer shall deduct any overpayment that has been established pursuant to this procedure from subsequent State Supplemental Rebates payable under this Agreement. In the event that no subsequent State Supplemental Rebates are payable, DHFS will refund any such overpayment to Manufacturer within thirty (30) days of its acknowledgement of the overpayment. Manufacturer will remit any underpayment to DHFS within thirty (30) days of Manufacturer's acknowledgement of such underpayment.

3.1.2. Product Utilization Eligible for Rebate. Product utilization under PDL shall only be eligible for State Supplemental Rebates pursuant to Attachment B, if such Product has been dispensed and used in connection with this Agreement only for Recipients and only for their own use.

3.1.3 Partial Quarter Submissions. In the event that a Product is placed on or removed from the Preferred Drug List after the beginning of a Fiscal Quarter, the State Supplemental Rebate for the Product for that Fiscal Quarter shall be estimated by multiplying the Supplemental Rebate Per Unit ("SRPU") for that Fiscal Quarter by prorated utilization for the proportionate number of days within the Fiscal Quarter that the Product was included in the Preferred Drug List.

3.2 Discretion to Market. Nothing in this Agreement shall be construed to prohibit Manufacturer from discontinuing production, marketing or distribution of any Product or from transferring or licensing any Product to a third party. It is understood that Manufacturer is liable for the payment of State Supplemental Rebates only on Products (as identified by their 11-digit NDC codes that were distributed directly or through the wholesale channel) to Pharmacies at which they are dispensed to Recipients. If Manufacturer elects to discontinue production, marketing or distribution of any Product, or to transfer or license any Product to a third party, Manufacturer shall notify DHFS as soon as commercially reasonable of such action. DHFS has the right to terminate this Agreement without cause upon such notification. If Manufacturer fails to notify DHFS, Manufacturer shall continue to be responsible for all State Supplemental Rebates until such notification is given.

3.3 Civil Rights. Manufacturer agrees to comply with applicable provisions of:

a. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., which prohibits discrimination on the basis of race, color, or national origin;

b. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

c. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex;

d. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age;

e. Section 654 of the Omnibus Budget Reconciliation Act of 1981, as amended, 42 U.S.C. 9849, which prohibits discrimination on the basis of race, creed, color, national origin, sex, handicap, political affiliation or beliefs;

f. The Americans with Disabilities Act of 1990, P.L. 101-336, which prohibits discrimination on the basis of disability and requires reasonable accommodation for persons with disabilities; and,

g. All regulations, guidelines, and standards as are now or may be lawfully adopted under the above statutes.

Manufacturer agrees that compliance with this assurance constitutes a condition of DHFS' continued performance under the Agreement, and that it is binding upon Manufacturer, its successors, transferees, and assignees for the period during which State Supplemental Rebates are provided.

4.0 Term and Termination

This Agreement shall be effective on July 1, 200__, and shall continue in force until June 30, 200__.

4.1 Bankruptcy and Insolvency. DHFS shall have the right to cancel this Agreement immediately and without prior notice in the event Manufacturer is adjudicated bankrupt, makes an assignment for the benefit of creditors without DHFS' prior written consent (which shall not be unreasonably withheld) or if a receiver is appointed for Manufacturer.

4.2 Termination for Breach. In the event one party determines that the other has violated or failed to comply with any of the requirements of this Agreement, the non-breaching party shall give the breaching party written notice of such breach. The breaching party shall have thirty (30) days from the receipt of notice in which to cure the breach to the satisfaction of the other party. Failure to cure shall give the non-breaching party the right to cancel this Agreement immediately. The non-breaching party shall give the breaching party written notice of the cancellation.

4.3 Termination Without Cause. Either party may terminate this Agreement in its entirety or as to any Product or Products by providing the other with sixty (60) days prior written notice of its intention to terminate.

4.4. Violation of Law. Manufacturer may immediately terminate this Agreement if there is a determination by any court of competent jurisdiction or any authorized governmental authority that the arrangements and transactions under this Agreement or any similar agreement constitute a violation of any law or regulation including without limitation 42 U.S.C. 1320a-7b(b) prohibiting illegal remuneration.

4.5 Effect on Accrued Obligations. Termination of this Agreement shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination.

4.6 Remedies. The fact that either party exercises any right of termination it may have under this Agreement shall not prevent such party from seeking any other remedy it may be entitled to in law or equity, nor shall any provision under this Agreement which provides a remedy to a party for the other party's non-performance be deemed to be a sole and exclusive remedy, unless specifically stated as such.

5.0 General Provisions

5.1 Record Keeping and Audit. During the term of this Agreement and for a period of five (5) years thereafter, or longer if required by applicable law or generally accepted accounting practice, both parties to this Agreement shall use reasonable efforts at all times to ensure that they maintain accurate books, files and records relevant to this Agreement. Manufacturer and DHFS shall have the right, at their own expense and upon reasonable notice to the other and in compliance with the other party's reasonable policies and procedures, to inspect and copy such records. If the audit findings indicate overpayment(s) to DHFS, Manufacturer shall adjust future or final payments otherwise due to DHFS. If no payments are due and owing to DHFS, or if the overpayment(s) exceed the amount otherwise due under this agreement to DHFS, DHFS shall refund all amounts which may be due to the Manufacturer.

5.2 Best Price Contingency. Performance under this Agreement shall be contingent on Manufacturer's Best Price and AMP not being affected by State Supplemental Rebates and the non-occurrence of the events described in Section 4.4 of this Agreement.

5.3 Confidentiality. Subject to 42 U.S.C. §1396r-8(b)(3)(D) and subject to any other applicable state and federal law, performance of the Agreement may require Manufacturer to have access to and use of documents and data which may be considered confidential and/or proprietary by the DHFS and/or by a DHFS contractor ("Confidential Information"). Any documents or data obtained by Manufacturer from DHFS in connection with carrying out the services under this Agreement shall be kept confidential and not provided to any third party unless disclosure is approved in writing by DHFS. Each party shall protect the confidentiality of Confidential Information provided by the other party, or to which the receiving party obtains access by virtue of its performance under this Agreement, to the extent such information is not subject to public disclosure under applicable provisions of Wisconsin and federal law. The receiving party shall use any information not subject to public disclosure under applicable law only for the purpose of this Agreement and shall not disclose it to anyone except those of its employees, consultants, contractors, agents, and

assigns who need to know the information provided that such persons and/or entities are notified of all confidentiality and non-disclosure provisions stated herein and expressly warrant and represent that they shall abide by such. These nondisclosure obligations shall not apply to Confidential Information that is or becomes public through no breach of this Agreement, that is received from a third party free to disclose it, that is independently developed by the receiving party, or that is required by law to be disclosed. Confidential Information shall be returned to the disclosing party upon request, except to the extent that Wisconsin law may require DHFS to retain a copy of such information. In addition, if DHFS receives a request for disclosure of confidential drug rebate information, DHFS agrees to take the position that this Agreement and any Confidential Information is exempt from disclosure under 42 U.S.C. and any other applicable state and federal law. In the event that either party is required by law to disclose any provision of this Agreement or any Confidential Information provided pursuant to this Agreement to any person, such party shall provide advance written notice to the other party sufficiently in advance of the proposed disclosure to allow the other party to seek a protective order or other relief. To the extent that DHFS utilizes the services of a third-party to develop and maintain the PDL and/or administer any portion of this Agreement, all provisions of this section shall apply to the third-party, and DHFS shall have the third-party sign a written agreement ensuring the third-party's compliance with all aspects of this section before disclosing any information to the third-party. This section shall survive termination or expiration of this Agreement.

5.4 Confidentiality of Program Recipient Identification. Manufacturer shall ensure that all information, records, data, and data elements pertaining to applicants for and recipients of public assistance, or to providers, facilities, and associations, shall be protected from unauthorized disclosure by Manufacturer and Manufacturer's employees, by Manufacturer's corporate affiliates and their employees, and by Manufacturer's subcontractors and their employees, pursuant to 42 CFR Part 431, Subpart F.

5.5 Notice. Any notice required or permitted to be given by either party to the other shall be given in person or sent by first class mail, postage prepaid, addressed to the other party at the following address:

If to DHFS:	If to Manufacturer:
Mark B. Moody	Contact Name
Administrator	Title
Division of Health Care Financing	Company Name
Department of Health and Family Services	
1 W. Wilson Street, Room 350	Address
P.O. Box 309	
Madison, WI 53701-0309	City/State/Zip

5.6 Amendment. Any subsequent amendment or modification of this Agreement shall be in writing and signed by the parties or signed by the party against whom enforcement of such amendment or modification is sought. Amendments or modifications must also be authorized by CMS

5.7 Nonwaiver. The failure of either party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy shall not impair or waive such right or remedy in the future. Every right and remedy given by this Agreement to the parties may be exercised from time to time as often as appropriate.

5.8 Choice of Law. This Agreement shall be governed by the law of Wisconsin without regard to Wisconsin's rules and regulations pertaining to conflicts of laws. The State of Wisconsin does not waive sovereign immunity by entering into this Agreement.

5.9 Effect of Future Laws. Manufacturer shall, upon request by DHFS and receipt of a proposed amendment to this Agreement, negotiate in good faith with DHFS to amend the Agreement if and when required, in the opinion of DHFS, to comply with Federal or State laws or regulations. If the parties are unable to agree upon an amendment within sixty (60) days, or such shorter time required by Federal or State law or regulation, DHFS may terminate this Agreement.

Manufacturer acknowledges that this Section 5.9 specifically includes, without limitation, reference to the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191, and regulations promulgated thereunder; and Manufacturer agrees that this Agreement will be amended prior to the Compliance Date specified in those regulations if DHFS determines, in its sole discretion, that amendment is necessary to ensure compliance with the regulations.

5.10 Compliance with Laws. In connection with its respective obligations under this Agreement, each party shall comply with all applicable federal, state and local laws and regulations, including without limitation any disclosure or consent requirements.

5.11 Rules of Construction. Unless the context otherwise requires or unless otherwise specified, the following rules of construction apply to this Agreement:

5.11.1 Provisions apply to successive events and transactions;

5.11.2 "Or" is not exclusive;

5.11.3 References to statutes and rules include subsequent amendments and successors thereto;

5.11.4 The various headings of this Agreement are provided for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereof;

5.11.5 If any payment or delivery hereunder shall be due on any day which is not a business day, such payment or delivery shall be made on the next succeeding business day;

5.11.6 "Days" shall mean calendar days; "business day" shall mean a weekday (Monday through Friday), excepting State holidays, between the hours of 8:00 a.m. Eastern Standard Time and 5:00 p.m. Eastern Standard Time;

5.11.7 Use of the male gender (*e.g.*, "he", "him", "his") shall be construed to include the female gender (*e.g.*, "she", "her"), and vice versa; and

5.11.8 Words in the plural which should be singular by context shall be so read, and vice versa.

5.12 Severability. If any provision term or condition of this Agreement is held to be illegal or void, unenforceable or against public policy in a judicial proceeding, such provision, term or condition shall be severed from this Agreement and shall be inoperative and the remainder of this Agreement shall remain binding on the parties.

5.13 Entire Agreement. This Agreement represents the entire understanding of the parties as it pertains to the subject matter contained herein, and supersedes all previous agreements related to State Supplemental Rebates. This Agreement may not be amended or modified without the mutual written consent of the parties.

5.14 Survival of Obligations. Those obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

5.15 Force Majeure. Noncompliance with any obligations hereunder due to force majeure, such as acts of God, laws or regulations of any government, war, civil commotion, act of terrorism, destruction of production facilities and materials, fire, earthquake, or storm, labor disturbances, shortage of materials, failure of public utilities or common carriers, and any other causes beyond the reasonable control of the parties, shall not constitute breach of contract.

5.16 Binding Agreement. This Agreement shall inure to the benefit of and be binding upon each party, its respective successors and permitted assigns.

Wisconsin Department of Health and Family Services

By:_____

Title:_____

Date:_____

[Manufacturer Legal Name]:

By:_____

Title:_____

Date:_____

ATTACHMENT A
SAMPLE INVOICE

DATE: 08/05/04

STATE OF WISCONSIN MEDICAID AGENCY OMB NO.
0938-0582 PAGE: 1
SUPPLEMENTAL MEDICAID DRUG REBATE INVOICE

MANUFACTURER: XYZ PHARMACEUTICALS STATE CODE: WI
INVOICE #: 12345678

ADDRESS 1: 123 MAIN STREET PERIOD COVERED: 104
ADDRESS 2: ROOM 100
CITY: ANYTOWN STATE: ST ZIP: 12345

NDC NUMBER	DRUG NAME	REBATE AMT TOTAL REIMB PER UNIT	TOTAL UNITS CORR REIMB	TOTAL REBATE AMT CLAIMED	NO OF SCRIPTS	AMT	FLAG
00000007231	PLACEBO ON	$0.121651	5,810.000	$706.79	194	$13,386.06	0
00000007228	PLACEBO ON	$0.121651	2,508.000	$305.10	88	$5,958.38	0
00000003144	PLACEBO ON	$0.000000	13,316.000	$0.00	3,327	$203,903.37	0
00000003121	PLACEBO ON	$0.000000	844.000	$0.00	181	$12,041.83	0
		TOTALS:	22,478.000	$1,011.89*	3,790	$235,289.64	

* PLEASE REMIT THIS AMOUNT TO: WISCONSIN DEPT. OF HEALTH AND FAMILY SERVICES
ADDRESS: WISCONSIN MEDICAID DRUG REBATE PROGRAM
6406 BRIDGE RD
MADISON, WI 53784-0014
ATTN: CASH UNIT

ATTACHMENT B
REBATE FORMULA

Drug Name	NDC (11 digit required)	Guaranteed Net Unit Price

State Supplemental Rebates shall be calculated according to the following formula:

State Supplemental Rebate = (SRPU) x number of Units paid for by Wisconsin Medicaid during the Fiscal Quarter

State Supplemental Rebate Per Unit (SRPU) = WAC- Primary Rebate per Unit – Guaranteed Net Unit Price